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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/557,256	04/24/2000	Shlomit Botton-Dascal	6727/0H037	8502

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Darby & Darby PC
805 Third Avenue
New York, NY 10022

EXAMINER

LAMARRE, GUY J

ART UNIT	PAPER NUMBER
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2133

17

DATE MAILED: 06/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/557,256

Applicant(s)

BOTTON-DASCAL ET AL.

Examiner

Guy J. Lamarre, P.E.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 1-5, 7, 12-24, 28-35, 38 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6, 8-11, 25-27, 36 and 37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 15.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. This office action is in response to Applicants' **Amendment** of *29 March 2004*. The Examiner has considered the IDS of *23 March 2004*.

1.1 Claims 6, 8-11, 25-27 and 36-37 remain pending.

1.2 The rejections of record are withdrawn in response to Applicants' amendment.

1.3 In response to Restriction requirements under 35 U.S.C. 12, as per office action of 1 April 2003, withdrawn Claims 1-5, 7, 12-24, 28-35, 38-39 shall be explicitly cancelled.

Response to Arguments

1.4 Applicants' arguments of *29 March 2004* are moot in view of new ground of rejection.

Claim Rejections - 35 USC ' 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2.0 This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

2.1 Claims 6, 8-11, 25-27 and 36-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicants' **Admitted prior art** (hereinafter **Admitted prior art**) in view of **Thadani et al.** (US Patent No. 5,648,965).

As per Claim 6, **Admitted prior art** substantially discloses an equivalent method for testing of a communication network, using a plurality of traffic agents (page 2 paras. 1 et seq.) coupled to communicate via the network, the method comprising: transmitting (page 2 paras. 1 et seq.) a sequence of data packets via the network from a first one of the traffic agents to a second

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one of the traffic agents, the sequence comprising both communication test packets and packets associated with an application that is accessed via the network (page 2 paras. 1 et seq.); recording arrival characteristics of the packets in the sequence, responsive to receiving the packets at the second traffic agent (page 2 paras. 1 et seq.). {See **Admitted prior art**, page 1 para. 2 – page 3, in passim, wherein communication network testing apparatus and method are described.} **Not specifically described** in detail in **Admitted prior art** is the step of observing at testing center (or detector tool) a difference in the arrival characteristics of the communication test packets relative to those of the packets associated with the application. **However Thadani et al.**, in an analogous art, discloses real time distributed communication network testing/analyzer wherein such techniques are described {See **Thadani et al.**, Id., e.g., Abstract and Figs. 1-3, col. 3 lines 45-50, col. 4 lines 7-61.} **Therefore**, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the procedure in the **Admitted prior art** by including therein transmit/arrival time observation means as taught by **Thadani et al.**, because such modification would provide the procedure disclosed in **Admitted prior art** with a technique whereby “nature of data corruption can be determined via analysis of data transfer transition times.” {See **Thadani et al.**, col. 4 line 60.}

As per Claim 8, said claim is rejected on the same rationale as that of **Claim 6**. **Thadani/Admitted prior art** discloses exchanging application data packets via the network between the second computer and the instance of the application running on the first computer, so as to determine application packet exchange characteristics; and comparing the exchange characteristics or packet delay of the application and test packets at the testing center or testing tool in **Thadani’s** Figs. 1-3, col. 3 lines 45-50, col. 4 lines 7-61.

As per Claim 9, **Thadani et al.** discloses an equivalent method according to claim 8, wherein running the instance of the application on the first computer comprises running an

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application server, and wherein exchanging the application data packets comprises transmitting application client messages from the second computer to the first computer in, e.g., in **Thadani's** Figs. 1-3, col. 3 lines 45-50, col. 4 lines 7-61.

As per Claim 10, Thadani et al. discloses an equivalent method according to claim 8, wherein running the instance of the application comprises running a distributed computing application (col. 4 lines 5-19) on the first computer, and wherein exchanging the application data packets comprises running another instance of the application on the second computer in **Thadani's** Figs. 1-3, col. 3 lines 45-50, col. 4 lines 7-61.

As per Claim 11, Thadani et al. discloses an equivalent method according to claim 8, wherein comparing the exchange characteristics comprises comparing a delay in the exchange of application data between the first and second computers relative to the exchange of test data in col. 4 lines 31-42.

As per Claims 25 and 36 said claim is rejected on the same rationale as that of **Claim 6**. **Thadani/Admitted prior art** discloses an equivalent apparatus for testing of a computer application accessed via a communication network, comprising: a first computer (**Thadani @** col. 6 lines 23-42) coupled to communicate via the network, and configured both to run an instance of the application and to act as a first traffic agent; and a second computer (**Thadani @** col. 6 lines 23-42), coupled to communicate via the network with the first computer, and configured both to act as a second traffic agent so as to exchange test data packets via the network with the first traffic agent, generally independent of the application, and to exchange application data packets via the network with the instance of the application running on the first computer, so as to determine and compare characteristics (e.g., **Thadani's** Figs. 1-3, col. 3 lines 45-50, col. 4 lines 7-61) of the exchange of the test data with corresponding characteristics of the exchange of the application data.

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As per Claims 26 and 37, Thadani et al. discloses an equivalent apparatus wherein the instance of the application running on the first computer comprises an application server (Thadani @ col. 6 lines 23-42), and wherein the second computer acts as a client of the application.

As per Claim 27, Thadani et al. discloses an equivalent apparatus according to claim 25, wherein the characteristics that are compared comprise a delay in the exchange of application data between the first and second computers relative to the exchange of test data in Thadani @ col. 5 lines 5-42.

Conclusion

3. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks, Washington, D.C. 20231

or faxed to: (703) 872-9306 for all formal communications.

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Fourth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Guy J. Lamarre, P.E., whose telephone number is (703) 305-0755. The examiner can normally be reached on Monday to Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert De Cady, can be reached on (703) 305-9595.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Information regarding the status of an application may also be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Guy J. Lamarre, P.E
Primary Examiner
6/9/04
